IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

LPA No.82 of 2007

Reserved on:**12.11.2007**

Date of decision:**17.12.2007**

Shri Kalyan Singh Appellant.

Versus

Shri Malkiat Singh and others Respondents.

The Hon'ble Mr. Justice Deepak Gupta,J.
The Hon'ble Mr. Justice V.K.Ahuja, J.

Whether approved for reporting[1]? Yes.

For the Appellant: **Mr.H.K.Bhardwaj and Mr. Y.Paul, counsel for the appellant.**

For the respdt.No.1: **Mr. Bhupender Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate.**

No.2 & 3: **Mr. M.S.Chandel, Advocate General with Mr. R.M.Bisht, Dy. A.G.**

Per V.K.Ahuja,J

This Judgment shall dispose of the Letters Patent Appeal filed by the appellant against the judgment dated 10.7.2007 of the learned Single Judge whereby the learned Single Judge had allowed the Civil Writ

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[1] Whether the reporters of Local Papers may be allowed to see the Judgment? No.

Petition filed by respondent No.1 and had set aside the order passed by the Financial Commissioner and the order passed by the Collector on 24.2.1990 was restored.

Briefly stated, the facts of the case are that respondent No.1 was owner in possession of land measuring 602 Kanals 6 Marla situate in Village Behdala, Tehsil and District Una. Respondent No.1 had sold land measuring 69 Kanals 1 Marla prior to 1971. In proceedings taken under the H.P.Ceiling on Land Holdings Act, 1972, land measuring 341 Kanals 4 Marla of respondent No.1 was declared to be surplus and it stood vested in the State of Himachal Pradesh. Respondent No.1 filed an application on 28.8.1986 before the Collector, Una for re-calling the order of vestment of land. On this application on 24.2.1987 the Collector made a reference to the Financial Commissioner (Revenue) for permission to review the order. The financial Commissioner(Revenue) treated the reference as revision petition and accepted the recommendations of the District

Collector, Una and quashed the order dated 9.12.1974 passed by the Collector declaring the land of the petitioner as surplus. The matter was remanded back to the District Collector, Una for decision afresh. On 18.11.1988, the Collector Una after receiving the report from the Tehsildar passed an order on 24.2.1990 that the land did not come within the purview of the H.P.Ceiling Act, 1972 and the compensation awarded in his favour was directed to be deposited back. The respondent No.1 deposited the compensation on 12.3.1990 in pursuance of the order of the Collector dated 24.2.1990. The mutation was also attested in favour of the petitioner.

Respondents No.4 to 6 filed a Civil Writ Petition before this Court against the order passed by the Collector on 24.2.1990. During the pendency of the Writ Petition, the State Govt. filed an affidavit that the Government had made a reference to the Financial Commissioner(Appeals) for taking appropriate action in regard to the impugned order

exercising the revisional jurisdiction. This Court directed the Financial Commissioner (appeals) to decide the revision petition within a period of three months as per order dated 3.10.2001. The financial Commissioner (appeals) on 12.12.2001 set aside the order passed by the collector dated 24.2.1990 and declared the land measuring 322 Kanals 6 Marla as surplus. The respondent No.1 challenged the said order passed by the financial Commissioner by filing C.W.P. No.288 of 2002. The plea taken by respondent No.1 was that the order passed by the Financial Commissioner (Appeals) was without jurisdiction having been passed after a period of more than 11 years. The Respondents No.4 to 6 and the State Government had supported the order passed by the Financial Commissioner(Appeals).

The learned Single Judge dealt with the question of exercise of suo moto powers by the Financial Commissioner(Appeals) and after referring to some decisions of the Apex Court as well this Court in ***Mangheru's case,*** which

shall be referred below, it came to the conclusion that the powers of review have to be exercised within a reasonable period and no outer limit can be fixed for exercise of such powers and it came to the conclusion that the order of the Financial Commissioner stands vitiated having been passed after a long period of more than 11 years which nullifies the order passed by the Revenue authorities in exercise of their powers under the Ceiling Act, 1972. Accordingly the order passed by the Collector dated 24.2.1990 was restored. Being aggrieved, one of the respondents in the previous writ petition has filed the present LPA.

We have heard the learned counsel for the parties and the learned Advocate General for respondents No.2 and 3 and have gone through the record.

The submissions made by the learned counsel for the appellant were that the son-in-law of respondent No.1 had applied after 13 years for review which could not have been

filed and a wrong reference was made by the Collector which was accepted by the Financial Commissioner and the case was remanded to the Collector. It was also submitted that the nature of the land had changed by passage of time and, therefore, the findings of the Collector in regard to the nature of land are incorrect. It was submitted that there was no occasion for review by the Collector and therefore, the Financial Commissioner was competent to suo moto consider the legality of the orders passed by the Collector.

On the other hand, the learned counsel for the respondent No.1 had submitted that since no appeal was filed by the State Government against the order of the Collector, the same had become final. It was also submitted that the petitioners and the other respondents were not the persons affected by the said order passed by the Collector and they were also not beneficiaries in case the land had vested in the State Government as surplus to be entitled to the

grant of the same and since their no rights were affected they had no right to apply before the Financial Commissioner for exercising his revisional jurisdiction against the orders passed by the Collector.

The first question which arises for consideration is as to whether the Collector had any power to recommend to the Financial Commissioner for review of the earlier order passed by the Collector which was not challenged. But to put the record straight we may mention that the Collector himself admitted in his reference that there was no power of review under the Act and reference was made on 24.2.1987 for review of order dated 9.12.1974 after more than 12 years. This plea is not being considered at this stage since the Collector made a reference which was accepted by the Financial Commissioner who permitted the Collector to re-consider the case and against the final orders passed by the Collector in the CWP this Court had directed the Financial Commissioner (appeals)

to decide the revision filed before him against the order of the Collector. According to the provisions of H.P.Land Ceiling Act, under Section 8 of the Act it is the duty of the land owner to file the return. The declaration under Section 9 of the Act has to be supported by an affidavit and in case he fails to file any declaration as required by the Act, the State Government can declare the land as surplus.

In the application filed by respondent No.1 before this District Collector, Una dated 28.8.1986 he alleged that he was owner of land measuring 623 Kanals 5 Marla out of which 365 Kanals 17 Marla was Gair Mumkin which was not under cultivation and was not land within the meaning of Section 3(ff) of the Act. It was alleged that the revenue staff wrongly declared 341 Kanals 4 Marla as surplus land and he prayed for re-opening of the case. On these averments, a reference was made by the Collector to Financial Commissioner (Revenue). He

recommended that as per the record produced by the land owner as well as the Patwari Circle the Gair Mumkin land works out to 98 Kanals 8 Marla and since there is no provision for review in the H.P.Ceiling on Land Holdings Act, 1972,he therefore, made the reference under Section 20(3) of the said Act. The said recommendation of the Collector was accepted by the Financial Commissioner (Revenue) vide his order dated 18.11.1988 and he quashed the earlier order dated 9.12.1972 passed by the Collector under the Land Ceiling Act and directed the District Collector for decision afresh. A perusal of the order passed by the Collector dated 24.2.1990 shows that the Collector considered the application of the Mukhtiar-am of the land owner for inspection through some revenue officer to determine the exact area, which comes within the vice of Ceiling Law. The Collector called for the report of the Tehsildar and concluded on the basis of the said report that out of the total land measuring 341-13 Kanals were found at

the spot in the shape of Khad, Cho, Nalash and Bheth and observed that the landowner was entitled to retain one unit of the land i.e.316-10 Kanals as Gair Mumkin which does not come within the purview of the Ceiling law. This clearly shows that though the recommendation made by the Collector was that the land measuring 98-8 Kanals is Gair Mumkin land but made a recommendation to the extent of land measuring 316 Kanal as Gair Mumkin land against the reference made by him. According to the reference, he was to consider as to whether the land measuring 98-8 Marla is Gair Mumkin but he accepted the report that the land measuring 316 Kanals is Gair Mumkin land on the basis of the report sought from the Tehsildar. It cannot be disputed that if the land had become uncultivable and after four crops, it becomes Banjar Kadim and therefore, the nature of the land was likely to change if it was not put to cultivation for the last so many years. But the Collector was of the opinion and made observation

considering the latest position of the land which approach cannot be said to be correct. A perusal of the impugned order of the Collector shows that he observed that the land owner as well as the State Government were given opportunity to adduce evidence and reference has been made only to the report of the Tehsildar in this regard and not to any evidence led by the State Government. Necessary correction was ordered to be made and the amount of compensation deposited by the land owner was directed to be returned. A plea has been taken that since the order was passed by the Collector himself who was representing the State Government and in case no appeal is preferred against that order, the same becomes final which can only be challenged before the Financial Commissioner by filing appeal or review. In case the Collector being trustee of the State Government, passed some order, the copy of which is sent only to Tehsildar Una for Compliance and not to any concerned officer of

the State Government, how the State Government can be said to be aware of such an order passed by the Collector who was the trustee and representative of the State Government. It was his duty to see that in case any adverse order was passed against the State Government, it ought to have been brought to the notice of the State Government. The plea has been taken as mentioned above that these powers could not have been exercised by the Financial Commissioner after 11 years of the passing of the order by the Collector and in accepting this plea, the learned Single Judge in its impugned judgment had referred to various decisions of the Hon'ble apex court. Reference was also made to a Full Bench decision of this Court in ***Mangheru*** vs. ***State of H.P. and others***, 1981 Indian Law Reports (H.P. Series) 283 wherein the Full Bench of this Court had considered the term 'a reasonable time' within which these powers could be exercised and it was finally held that the period three years from the date of

knowledge of fraud, the suo moto powers can be exercised. No outer limit has been provided but action has to be taken from the date the fraud come to the light of the authorities. No outer limit has been fixed within which these powers can be exercised by the authorities and it is not disputed that the Financial Commissioner could have suo moto exercised the power under H.P.Ceiling and Land Holding Act. It is clear from the orders passed in the previous revision petition that the State Govt. had made a statement in the Court for making a reference to the financial Commissioner (Appeals) for which time was given by this Court to the Financial Commissioner to decide the case and once this fraud had come to the knowledge of the Financial Commissioner that such an order was procured by respondent No.1 from the Collector, the legality of such order could have been looked into by the Financial Commissioner by exercising his powers of revision. A perusal of the impugned order

passed by the Financial Commissioner shows that he had clearly observed in its impugned order that none appeared on behalf of the State before the District Collector, Una during the proceedings before him. The case was closed and consigned to the Record Room by the Collector, Una and the mere fact that the State Government was not represented by any other other person and the case file was consigned to the Record Room, nobody could have brought this illegality to the notice of the State Government except the custodian of the State property, namely, the collector who himself was a party to this decision who never informed the State Government that such orders have been passed against them and, therefore, it was necessary for the Financial Commissioner to have taken cognizance of this illegality. The mere fact that the order was passed more than 11 years back by the Collector cannot stand in way of the Financial Commissioner to set the naught right by

exercising his revisional powers under the provisions of the Act.

Coming to the right of some residents of the Village who filed the Writ Petition challenging the orders passed by the Collector, they may not be the direct beneficiaries of the surplus land which was to vest in the State Government but still as public spirited persons or residents of the Village they had right to challenge the order in favour of some person.

A perusal of the impugned order further shows that during the pendency of the writ petition a letter was received in the Court that the ceiling case of Malkiat Singh decided by the Distt. Collector, Una on 24.2.1990 was not in consonance with law, and therefore, the said order was reviewed by the Financial Commissioner in exercise of its powers. It was clearly observed that the review was made for land measuring 98.8 Kanal as Gair Mumkin land which was required to be examined for review but in the final order,

the Collector exempted 316 Kanals which action of the Collector in itself was sufficient to show that it was illegal and he had played a fraud with the State Government of whom he was a custodian or a representative but once the fraud had been committed by the Collector himself, the said Order could be reviewed at any time by the Financial Commissioner or taking three years as the period during which the Financial Commissioner can exercise its revisional jurisdiction and therefore, in our view, the learned Single Judge had taken a too technical view that these powers could not have been exercised by the Financial Commissioner after 11 years of the order passed by the Collector. The interest of the State has to be protected in the peculiar facts and circumstances of the case since the surplus land had vested in the State for the general public and no one can play fraud with the State Government by wrongly invoking jurisdiction of the Collector and getting the order reviewed to the detriment of the general

public and there can be no time limit to set aside any illegal order passed by the Collector himself. The learned Financial Commissioner in its impugned order had referred to the previous record and it observed that report of the Tehsildar with regard to these Khasra numbers was incorrect and deserves to be rejected. In the final order, the Financial Commissioner came to the conclusion that land measuring 322 Kanals 16 Marla is declared surplus and land measuring 18.8 Kanal, which has been classified as Gair Mumkin in the revenue record is exempted from the purview of the Act. Thus the land measuring 316 Kanal 1 Marla was assessed by him earlier plus 18.8 Kanals and an area of 322.6 Kanal was declared as surplus for vestment in the State. The said order passed by the learned Financial Commissioner is based on the report of the Tehsildar and the Patwari and is based on the revenue record and the said order does not suffer from any illegality to be interfered with.

While taking this view, we are conscious of the fact that the first order whereby 341 Kanals 4 Marlas of land of respondent No.1 was declared surplus was passed on 9.12.1974. The review of the order was sought for in 1986 and reference for review was made by an officer not competent to do so in 1987. Even at that time, the reference was made only qua 98.8 Kanal. After receipt of the permission of the Financial Commissioner, the Collector passed an order of review in respect of 341 Kanals 6 Marlas. This shows clear connivance between the revenue officials and respondent No.1. It is obvious that they were hand in glove with each other. The record shows that some officials of the State were acting in connivance with respondent No.1 to defeat the interest of the State. In such circumstances, the respondent No.1 was not entitled to rake up the plea of limitation especially when he himself had applied for review of the earlier order after a lapse of 11 years.

The learned Single Judge had wrongly upheld the order of the Collector ignoring the fact that the action was beyond his jurisdiction in declaring the land as surplus ignoring his own recommendation vide which he had made recommendation for declaring 98 Kanals 8 Marlas as surplus but finally he recommended the land measuring 315 Kanals as Gair Mumkin which order cannot be upheld. The delay in exercising the powers of review by the Financial Commissioner has to be condoned in the peculiar facts and circumstances of the case the Collector was himself a party to the lis and had failed to protect the interest of the State or to inform the State government of the final order was passed.

In view of the above, the appeal is allowed. The Judgment passed by the learned Single Judge is set aside and the order of the Financial Commissioner which does not suffer from any illegality is restored and the land shall stand vest in the State in accordance with law as per order of

the Financial Commissioner. There is no order as to costs.

(Deepak Gupta),J

Dec. 17,2007(sds) **(V.K.Ahuja),J.**